

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYDE K. WHITE,)	CIV. NO. 06-00636 ACK-BMK
)	
Petitioner,)	
)	FINDING AND
vs.)	RECOMMENDATION THAT
)	PETITION FOR HABEAS CORPUS
CLAYTON FRANK, Warden,)	BE GRANTED
Halawa Correctional Facility;)	
IWALANI WHITE, Interim Director,)	
Department of Public Safety, State of)	
Hawaii; FRANK J. LOPEZ, Deputy)	
Director for Corrections, Department)	
of Public Safety; and MARK J.)	
BENNETT, Attorney General, State)	
of Hawaii,)	
)	
Respondents.)	
_____)	

FINDING AND RECOMMENDATION THAT PETITION FOR HABEAS
CORPUS BE GRANTED

On November 29, 2006, Petitioner Wayde White (“Petitioner”) filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. After careful consideration of the petition and all other filings, the Court hereby FINDS and RECOMMENDS that the petition for habeas corpus be GRANTED and that Petitioner be resentenced.

On March 1, 2005, Petitioner was convicted of three class-C felony offenses: two counts of second-degree forgery under Hawaii Revised Statute § 708-852 and one count of second-degree theft under Hawaii Revised Statute § 708-831(1)(b). Petitioner was sentenced to three concurrent ten-year sentences pursuant to Hawaii's extended-term sentencing regime.

On March 10, 2006, the Hawaii Supreme Court affirmed Petitioner's conviction. Petitioner then filed the present action. The only ground for habeas relief he asserts is that the imposition of his extended term sentences violated Apprendi v. New Jersey, 530 U.S. 466 (2000). Respondents (collectively "the State") filed an answer on February 9, 2007, and Petitioner filed a reply on March 7, 2007. On May 18, 2007, the State notified the Court that it was withdrawing its opposition to Petitioner's habeas petition.

Accordingly, the Court hereby FINDS that under Kaua v. Frank, 436 F.3d 1057 (9th Cir. 2006), Petitioner's extended term sentencing violated Apprendi and RECOMMENDS that habeas corpus be GRANTED and petitioner resentenced.

IT IS SO FOUND AND RECOMMENDED.



/s/ Barry M. Kurren
United States Magistrate Judge
Dated: June 4, 2007

White v. Frank; Civ. No. 06-636 ACK-BMK; FINDING AND
RECOMMENDATION THAT PETITION FOR HABEAS CORPUS BE
GRANTED.